Public Land and Resources Law Review

Volume 17

Stability and Predictability in Federal Forest Management: Some Thoughts from the Chief

Jack Ward Thomas

STABILITY AND PREDICTABILITY IN FEDERAL FOREST MANAGEMENT: SOME THOUGHTS FROM THE CHIEF*

Jack Ward Thomas**

As my key staff and I suffered through the acrimonious congressional hearings of the past year—with more to come—I was struck with how many times the desire for "stability" or "predictability" of timber supply as an absolute necessity was mentioned by committee members and witnesses. The issue is at the forefront of the discussion of how national forests should be managed. The extensive, increasing, and continuous changes prevalent in our society now become manifest in how natural resources are exploited. These continuing debates and changes shake the pillars of the temple of the faithful who chant many mantras with the same meaning—"community stability," "nondeclining even flow,"[1] "annual sale quantity,"[2] "predictability." This refrain was manifest in hundreds of the comments the Forest Service received to the proposed revised land use planning regulations published in the Federal Register[3]—"give us guaranteed results and assured stability."

In school I was taught the vision of the "regulated forest" and the resultant predictable outputs of forest commodities. The vision, I have found, is nothing but a dream—a dream that could only be realized in a time of seemingly boundless virgin forests. This vision held only so long as, no matter what the circumstances, there was more timber available over the next ridge. That timber was easy to access and log, and environmental risks were either less appreciated or more palatable than at present. Further, it was assumed that good forestry was, as a matter of course, good wildlife management, good watershed management, etc.

By now it is becoming obvious that this dream was built on the pillars of the seemingly boundless virgin forest, an ethic of Manifest Destiny, and the hubris of thinking we were able to predict the response to the interaction of nature and humans. This was coupled with an inflated sense of understanding of forested ecosystems and of human control. Perhaps it is time to recognize that stability and predictability are not attainable in any western region, except for relatively short periods of years or decades.

---

* This address was adapted from a speech delivered at the Mansfield Conference and Academic Symposium on "Landscapes and Communities in Asia and the Pacific Northwest" held at the University of Montana on October 16, 1995.

** Chief, United States Forest Service, 1993 to present.

1. *See* 16 U.S.C. § 1611 (1994); *see also* GEORGE C. COGGINS, ET AL., FEDERAL PUBLIC LAND AND RESOURCES LAW 664-66 (3d ed. 1993).
2. 16 U.S.C. § 1611.
3. 60 Fed. Reg. 18,886 (1995).

Why? Consider the variables that interact to affect the long-term stability of the timber supply—insects and disease, fire, climate, past management actions, agency budget, scientific knowledge, technology, forest product markets, public opinion. Each variable is subject, more or less independently, to considerable variation over the longer term. Taken together, in terms of their interactions, these variables are guaranteed to produce different levels of uncertainty and make the attainment of stability unlikely.

It is increasingly apparent that ecological processes are not as well understood nor as predictable as had been assumed by natural resource managers steeped in Clementsian ecological theory of orderly and predictable succession of plant communities from bare ground to a mature, steady state.[4] Ecologists now understand that ecological responses to management actions may vary widely depending on the interactions of the influences of insects, disease, fire, drought and the impacts of previously executed management activities.

Impacts of insect and disease in managed forests are not clearly predictable nor more than marginally or temporarily controllable. The levels of insect populations and diseases are influenced by the interactions of ecological processes and previous forest management actions. The problem is apparent with native insects and pathogens. With time, the continued exchange of forest pests and diseases between continents is certain. We would do well to consider the consequences of the introductions that have already taken place, such as chestnut blight, white pine blister rust, and gypsy moth. Methods of "control" are constantly evolving, but the feasibility of such treatments is dependent on a number of factors including environmental impact, cost effectiveness, public opinion and legality—all of which fluctuate. Only 25 years ago, DDT was being widely applied in the forest environment, was highly effective in suppressing some insect "outbreaks," and was assumed to be benign in the environment. Times change. DDT is now banned from such use.

Fire seems less and less "controllable" or even manageable, at least not at the levels assumed in the past. Of course, fire is part and parcel of ecological processes. Debates now rage over the use of prescribed fire, and where, when, if, and how to suppress wildfire. The extent and severity of wildfires that occurred several times in the past decade would not have been considered likely only a few decades ago.

Drought comes periodically and is not highly predictable in terms of occurrence, duration, severity, or influence. The interactions between weather extremes and other variables that affect the forests can be dramat-

---

4. *See* FREDERIC E. CLEMENTS, PLANT SUCCESSION: AN ANALYSIS OF THE DEVELOPMENT OF VEGETATION (1916).

ic. For example, consider the interaction of the spruce budworm outbreak and severe drought in the Blue Mountains of Oregon. There the combination of these two factors has resulted in increased mortality for large stands of trees. If global warming and its effects on weather patterns predicted by some scientists are borne out, there will be dramatic impacts on the forest managers' ability to forecast timber production. Others question the entire hypothesis of global warming. Uncertainty abounds.

Past management actions have a pronounced effect on future forest conditions. This, of course, is expected. But management actions vary widely and treatments change quickly depending on scientific understanding, timber markets, public opinion, cost-benefit estimates, funding availability, and legality. Management actions frequently do not produce the results anticipated.

Funding is the fuel that drives most land management activities. The best laid out management plans can only be effective when executed by a qualified work force to the extent that funding allows. Over time, funding for forest management activities on federal lands has never come close to anything approaching programmed levels. The funding that is available has proved to be neither stable in amount nor in designated purpose. Appropriations change dramatically with the surges of political tides, the change of persons in power, and the economic and social pressures of the moment. Perhaps the instability of natural resources management is one of the attributes of a vibrant democracy.

Added to the already fluid situation is the increasing propensity of both the Administration and Congress to micro-manage federal land management agencies' activities through the budget process. Budgets, after all, are very significant policymaking tools. It is increasingly common for the long-standing struggle for power over federal land management between the executive and legislative bodies to be played out in the form of increasingly detailed budget direction to land management agencies. It is becoming more common for the Congress to dramatically alter the effects of statutes and evolved case law by giving contrary direction in legislative budget action with the caveat "all other laws not withstanding." These "quick fixes," however, frequently cause far more problems in federal land forest management over the long term than they fix in the short term. The acrimony of the debate over the advisability and approaches to carrying out the timber salvage and release of the "318 sales"[5] mandated by Congress illustrates the potentially destabilizing impacts of the budget process. The "salvage rider"[6] is another example.

---

5. Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, Pub. L. No. 101-121, § 318, 103 Stat. 701, 745-50 (1989).

6. Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-Ter-

Micro-management of agency activities by both the executive and legislative branches of government are somewhat antithetical to a stable management program. Congressional micro-management is commonly carried out through the budget process with detailed instructions that change from year to year and election to election. Instructions included in appropriations often have the effect of making or dismantling laws passed in earlier sessions. Sometimes these appropriations bills are passed with little public debate on the substance of these instructions. If Congress and the public truly want stability and predictability in land management agency programs, we should recognize that much, perhaps most, of the instability can be traced directly to the Congress itself. The interaction of the "crazy quilt" of laws and regulations and budget instructions exacerbate already serious ills.

The presence of a stable work force of adequate size and with appropriate skills and sufficient experience in working within particular ecosystems and communities is also essential to any stable management approach. A work force that is in a constant state of flux due to budget shifts, uncertainty of policy, shifts in organizational structures, and dramatic adjustments in size is not a work force that has the highest probability of producing predictable results. Over the last several years the Forest Service has experienced dramatic change in the size and skill of its work force. We have seen significant losses among the most experienced personnel, declining budgets, and changes in budget allocations that reflected changes in priorities.

Science continues an inexorable march toward "truth" or, at least, some better approximation of it. Antithetical to stability and predictability, new understanding in forest management comes ever more rapidly to the fore. This proves perennially unsettling to the status quo and causes the need for adjustments, sometimes dramatic adjustments, in management approaches. Stability, thus, can only be maintained in the absence of new knowledge. In the longer term, achievement of some degree of stability will require a constant balancing act between new knowledge that increases timber yields and new knowledge that produces changes in, or constraints on, present forest practices. Unfortunately, this recognition has led some in political power to seek stability by means of limiting the acquisition, dissemination, or use of new knowledge.

Closely related to development of new knowledge is the development of technology that will constantly produce new opportunities to conduct forest practices in better ways, obtain information, and store and process data in new and more meaningful ways. Yet new technology, like new

---

rorism Initiatives, for Assistance in the Recovery from the Tragedy that Occurred at Oklahoma City, and Rescissions Act, Pub. L. No. 104-19, § 2001, 109 Stat. 194, 240-247 (1995).

information, can cut both ways in terms of effect on stability.

Markets determine prices to be paid for commodities and, in turn, the feasibility and purpose of management for the production of wood fiber. Markets also influence the timing and extent of the cut. Markets then produce both short and long-term affects on forest management that have an unsettling effect on stability and form of supply. Local fluctuations in markets for wood products seem to be becoming even less predictable as timber markets become increasingly global.

Closely related to markets for wood are the effects of the substitutability of other products for wood. As wood prices increase, more and more substitutes for wood come into some markets, which serves to constrain some wood prices at the margin. Technological innovation will always affect the stability of the timber market.

Perhaps most influential of the variables influencing stability in forest management and the resulting timber cut levels are the shifts in public opinion about what is appropriate forest management. This variable is a particularly salient feature in public land and resource management. Significant changes in public opinion can be noted over the past fifty years—with truly significant and intense shifts over the past two or three decades. These shifts are manifest in the laws that have driven forest management over that period. For example, note the determined move by foresters to even-aged forest management practices in the period of 1960 to 1985 and the subsequent retreat from "clearcutting" in the early 1990s.

Shifts in public opinion come to bear on land managers through the political process. As the political pendulum has swung back and forth over the decades, associated affects on forest management and timber supply are obvious. Politics comes most obviously to bear in the enactment of laws that can and do have dramatic affect on forest management. The interactions of such laws as the Multiple-Use Sustained Yield Act,[7] the National Forest Management Act,[8] the Wilderness Act,[9] the Wild and Scenic Rivers Act,[10] the Clean Air Act,[11] the Clean Water Act,[12] and the Endangered Species Act[13] dramatically influence the timber yield. Predictability is shaken by the administrative actions of regulatory agencies exercising their authority under these laws. Note the 80 percent reductions[14] in timber yields from the public lands in the Pacific Northwest

7. 16 U.S.C. §§ 528-531 (1994).
8. 16 U.S.C. §§ 1600-1614 (1994).
9. 16 U.S.C. §§ 1131-1136 (1994).
10. 16 U.S.C. §§ 1271-1287 (1994).
11. 42 U.S.C. §§ 7401-7642 (1994).
12. 33 U.S.C. §§ 1251-1387 (1994).
13. 16 U.S.C. §§ 1531-1544 (1994).
14. *See* FOREST SERVICE, U.S. DEP'T OF AGRIC., REPORT OF THE FOREST SERVICE T-58 (1991)

emanating from the decisions to list the northern spotted owl,[15] the marbled murrelet,[16] and various species of salmon[17] as threatened under the Endangered Species Act. Such listings, of course, were the result of the recognition of more complex social and environmental problems.

Of equal significance is the inexorable increase in the number of court decisions interpreting these laws. Lawsuits against federal land management agency actions dramatically influence public forest management at an ever-increasing rate. Each court decision has the potential to dramatically influence the predictability of timber supply and other multiple uses (grazing, fish and wildlife, recreation, and water).

These increasingly complex processes, in turn, produce a veritable minefield of potential violations of procedure that resource managers must avoid in any attempt to produce commodities in compliance with often conflicting laws, regulations, and political direction. Any violation of procedure, no matter how slight, may well result in a judicial injunction. These complex procedures, which become more complex with each legal decision against the Forest Service, require more sophisticated technical assessments and more time to execute agency decisions. Thus, these procedures become increasingly expensive in dollars and time. This makes timber sales ever more expensive to execute and produces increasing difficulty in avoiding "below cost" timber sales.[18] This spiral of increasing cost and increasing difficulty in removing timber from federal lands with returns that are above production costs needs careful examination. Are better, more environmentally sensitive timber sales the result?

Given the myriad of interacting variables, it is time for concerned citizens and leaders to accept the reality that the dream of a stable timber supply from public lands is an illusion. Certainly, this conclusion is inevitable if the status quo is maintained. If the stability and predictability of timber supply is deemed important, the picture painted here is a gloomy portrait. However, while stability seems likely to be considerably less certain than in the "good old days" when virgin forests and forest managers buttressed the myth of stability, commodity production from federal lands could be much more predictable than at present. How?

Ecological processes are too complex to ever be fully understood, but understanding is being dramatically enhanced and can be accelerated with increased, or at least stable, levels of research effort. For example, the

---

(offering for sale 5.047 billion board feet (bbf) of timber in the Pacific Northwest region) and REPORT OF THE FOREST SERVICE 124 (1994) (offering .435 bbf in the same region).

15. 55 Fed. Reg. 26,114 (1990).

16. 57 Fed. Reg. 45,328 (1992).

17. *See, e.g.*, 58 Fed. Reg. 49,880 (1993) (listing the Snake River Spring/Summer Chinook Salmon and the Snake River Fall Chinook Salmon).

18. *See infra* note 20 and accompanying text.

trend toward using ecosystem management concepts in carefully defined contexts holds promise for dampening oscillations in forest outputs caused by managerial attempts to sustain biodiversity by addressing recovery[19] one threatened or endangered species at a time. Oscillations in timber supply can also be moderated by taking a conservative view of annual sale quantity projections as opposed to the tendency to make overly optimistic projections such as those that resulted in the first forest planning efforts of a decade or so ago.

It is becoming increasingly obvious that the overriding de facto policy for the management of federal lands has become the protection of biodiversity. That de facto policy has evolved through the interaction of laws, regulations, court decisions, and expedient administrative direction. This de facto policy, I believe, is the crux of the raging debate over the levels of commodity production that can be expected from the federal lands. Such a dramatically important policy should be recognized and examined closely by the American people, the President, and the Congress. If that is our policy, it should be clearly stated, recognized openly, and the consequences accepted. If biodiversity protection is not a desired national policy, that should also be stated. A clear declaration of policy regarding biodiversity is one key to the "stability" debate.

The role of insect and disease in forest management could be addressed in a fashion more in tune with long-term effects. This would replace the more common management course of "control" efforts involving application of pesticides, the overall effects of which are poorly understood and are often found ineffective or environmentally unacceptable. Such an approach will require reconstitution of research and development efforts that have deteriorated over the past several decades. Much good thinking and planning have already gone into the design of such efforts.

The role of fire in forest ecosystems has been reevaluated at the federal policy level. It is clear that controlled fire has a part in forest management. Past fire and forest management responses have helped produce situations in areas of the West where many wildfires now burn too hot and too expansively to be ecologically, socially, or politically acceptable. Therefore, it is essential to begin producing situations in managed forests in which fire can play an appropriate and immediate role. This will require a shift in management policy and a shift in management focus and funding priorities. It is well past time to face up to the costs of fire management. "Funding games" with the federal land management agency budgets in which true costs of fire control efforts are, at best, difficult to ascertain and, at worst, camouflaged should cease. These games make it appear that

19. *See* 16 U.S.C. § 1533(f).

budgets for fire management are much lower than they actually are. Fire management is routinely funded at a level too low to make proactive, effective management efforts possible. On the other hand, agencies are afforded an "open checkbook" to fight wildfires of enormous size and intensity; only those such fires provide the political impact necessary to open the checkbook. Such an approach is misleading both in terms of the actual resources allocated to fire suppression management over the long-term and in terms of making the best and most effective use of resources, people, and dollars.

Weather fluctuations cannot be controlled but can be recognized and anticipated as natural phenomena that occur on a recurring basis. Fluctuations are normal and are not an unnatural "disaster." And, if such fluctuations are considered as within the range of anticipated variability, anticipated consequences can be modeled into appropriate management outcomes.

Outcomes of management actions can be conservatively estimated with past experience as a guide. Insanity has been defined as doing the same things over and over and expecting a different result. Decidedly, optimistic outcomes were the trademark of the first generation of forest plans. In most cases, this optimism has not been justified and only reluctantly recognized and abandoned. This caused the Forest Service's performance, in terms of commodity production, to consistently come in at lower than anticipated levels. The predictions were not valid and belated recognition of that fact, in turn, caused additional instability because of accumulated effects. More conservative approaches are more apt to produce predictable results. If forest output exceeds that anticipated, it is easier to adjust commodity yields upward than to deal with the social and political consequences of short fall.

Funding could be guaranteed over longer time periods. For example, steady funding for, say, a five year period with enhanced ability to shift funds between budget line items at the land management agency head's discretion could add considerable stability to programs. This stability in funding is directly related to the maintenance of a stable and appropriately balanced work force. It would be likewise conducive to production stability if work force numbers and composition were predicated on work to be done and objectives achieved rather than on politically driven manipulations of the work force unrelated to the work to be done. Or, conversely, the work to be done should be adjusted to match funding and work force—and quickly. Doing "more with less" can only stretch so far as the corollary situation of doing "less with less" quickly sets in.

While the search for new understanding through science may produce short-term instability in the timber supply, appropriate management reaction to new information is essential to long-term stability if renewable

natural resources are to be managed in a sustainable fashion. In the end, there can be no turning back from science no matter how politically expedient that may seem in the short run. Given the inexorably increased human population with increasing per capita demands on natural resources, humans are engaged in a race with increasing knowledge to ensure the sustainability of renewable natural resources and ultimate disaster. While the cost of the acquisition of understanding through science may seem expensive, that cost is minor over the long-term compared to the high cost of ignorance. Yet, as a nation we are stepping back from an already inadequate investment in research and extensive information synthesis for use in guiding management decisions.

The continued development of technology is likewise essential to make better and more environmentally benign use of forested lands that are available for timber production. The same is to be said for better and more varied uses for wood previously considered non-merchantable. These and other such developments can help increase the efficiency in use of timber yields and thus offset the constraints on wood supply that come about for other reasons. Efficiency in the harvest and processing of wood and in the reuse or recycling of wood fiber should be considered as valuable, even more valuable than increased wood production.

The effects of shifts in markets for timber can be somewhat stabilized by allowing land management agencies more flexibility in when and how timber is marketed. Selling timber at a relatively continuous rate regardless of current price would seem irrational to any private land owner and might seem equally ill-advised to land management agencies. Timber purchasers sometimes buy, for speculative reasons, the regular offerings of federal timber, which are offered regardless of market conditions, and proceed with the cut at a more opportune time. Withholding federal timber from the market during periods of inordinately low prices should produce pressure for increase in price, and selling when the price is relatively high should produce forces that reduce prices. The result should tend to be a market with dampened oscillations in price over time, which should, in turn, have a stabilizing influence. This should provide better opportunity for federal land managers to avoid "below cost" timber sales, which would tend to stabilize the political discourse that surges around this complex issue[20]—discourse that is often over-simplified. Timber sales could be readied at a relatively continuous rate and marketed at appropriate times in

20. *See* COGGINS, ET AL., *supra* note 1, at 667-68; *see also* Alan G. McQuillan, *The Problem With Economics in Forest Planning . . . An Overview at Three Levels*, 10 PUB. LAND L. REV. 55 (1989); David N. Wear, *The Market Context of National Forest Planning*, 10 PUB. LAND L. REV. 91 (1989); Charles F. Wilkinson & H. Michael Anderson, *Below-Cost Sales: Are They Legal?*, 85 J. FORESTRY, August 1987, at 21.

order to assure a stable work force and a mechanism to respond rapidly to market conditions.

The ability to substitute other products for the use of wood, over the long term, may well be based on comparative advantage in terms of environmental costs and consequences of production. To the extent that wood can be produced in a sustainable and aesthetically acceptable fashion, it should have a significant edge relative to wood substitutes in the market over much of the developed world. That, over the longer term, can also influence the stability of market share for wood products.

Public opinion seems to be increasingly polarized about the management of federal lands and leads to potentially wider swings in the politics surrounding these issues. This volatility could be eased by concerted efforts to bring voices of moderation into the debate to provide credible alternatives to the "spin doctors" that make a living by and through dissemination of propaganda and the creation and exacerbation of conflict. These gladiators get paid to win, not to search out consensus. The Forest Service played the role of moderation in the past and could do so again given proper policy direction by the Administration and the Congress. So long as the land management agencies operate in an arena where national policy is unclear and federal land management agencies serve as designated punching bags for the gladiators, the melee will continue. In a clearly stated national policy for management of public lands lies a more rational debate, thus enhanced stability. If the Forest Service (among other agencies) is given portfolios and funding to take "the bully pulpit" for natural resources management that executes a clearly stated national policy, it could allow the agency to again play its historic role as a conservation leader.

It is time to acknowledge that this nation has come to a point at which the interacting forces of the myriad of laws and regulations that come to bear on federal land management in connection with the constant upsets in balance that occur with decisions in lawsuit after lawsuit have produced a situation antithetical to predictability and stability of federal land management. The applicable laws should be evaluated, in total, and restructured to remove conflicts while radically simplifying management processes. More "quick fixes" of amending various statutes seem likely to cause increased instability over the long-term. Changes, piece meal, in applicable laws could cause even more problems due to the upset in the balance of the myriad case law. Perhaps it is time for a resurrection of the concept embodied in the Public Land Law Review Commission.[21] The efforts of that commission, in the late 1960s, indicated significant prob-

21. Public Land Law Review Commission, Pub. L. No. 88-606, 78 Stat. 982 (1964).

lems and solutions that were never truly addressed by the political process.[22] It is important to recognize that most of the environmental laws that impact the public lands so significantly (and disproportionately on the federal lands) were enacted since that time. This is not a time for timidity. The situation is producing increasing polarization in concerned citizenry and conflicts in public land management, which, in turn, produces increasing frustration in the body politic. This could lead to poorly considered and sweeping changes in the responsibility for and methods of public land management.

The administrative findings of regulatory agencies concerning proposed management activities by federal land managers produce situations in which equally or better qualified experts in management agencies are second guessed by colleagues in regulatory agencies. For example, agencies such as the Environmental Protection Agency or the Fish and Wildlife Service can stop management activities proposed by other agencies, like the Bureau of Land Management and the Forest Service. This can be disruptive, redundant, irritating, and an expensive duplication of effort. Might it be preferable, for example, for regulatory agencies to produce or approve recovery plans for threatened or endangered species in cooperation with management agencies and, then, leave the responsibility for plan execution to the land management agencies? The current situation increasingly amounts to joint management of federal lands by both management and regulatory agencies. Though the situation is working somewhat better over time, the situation should be reevaluated with an eye to reducing redundancy, increasing efficiency (i.e., costs reduced), and minimizing project execution time.

Court rulings are proliferating and creating continuing chaos in our attempts to carry out land management activities. Agency decisionmakers spend as much or more time with lawyers as with natural resource management personnel. This is a part of what has evolved as the "American way" of finding solutions to disagreements through litigation. Of course, agencies should obey the law. That is not my point. The laws might be changed to provide that the loser in a legal action pays the costs of the winner, particularly if the judge considers the plaintiff's case to be frivolous. Presently, the government pays if it loses in court, but the reverse is not true—the plaintiffs do not pay costs if they lose. In fact, depending on the opinion of the presiding judge, the government sometimes pays the plaintiff even when the government wins. This provides incentive to sue

22. *See* ONE THIRD OF THE NATION'S LAND: A REPORT TO THE PRESIDENT AND TO THE CONGRESS BY THE PUBLIC LAND LAW REVIEW COMMISSION (1970); *see also* AMERICA'S PUBLIC LANDS: POLITICS, ECONOMICS & ADMINISTRATION (Harriet Nathan ed., 1972).

the government and no significant disincentive (i.e., no penalty, and, perhaps, a reward for losing) for such actions. Some lessening of the impact of lawsuits on the Forest Service would contribute to enhanced stability.

The avoidance, or at least diminution, of contrary direction from the executive and legislative branches of government to land management agencies is critical to enhanced stability. Such conflicting instructions put the management agencies squarely between a rock and a hard place. Unfortunately, the public generally does not understand the agency's dilemma and puts blame on the agencies for the results of the strife between the executive and legislative branches. To the extent that such struggles can be moderated, the people can anticipate increased stability and predictability in public land management.

Complex processes that have evolved to deal with too much uncoordinated law, too much uncoordinated regulation that require too much interagency involvement can and should be simplified. Dramatically reducing and simplifying these processes, while maintaining the intent of the laws upon which they were built, will channel the energies of natural resource management agencies away from procedural requirements and toward achieving substantive, on-the-ground results that the public (or Congress and the Administration) expects and the agency strives to provide. The response by the various government agencies involved in attempting to carry out administrative and congressional direction in compliance with all the applicable laws that are constantly, and independently, subject to interpretation by the courts has been to evolve increasingly complex procedures to try to lay out a path—a yellow brick road to the Emerald City—that will assure a managerial decision that will stand up to the judicial review that will, most assuredly, come.

The intent of any set of procedures should be to provide logical mechanisms for achievement of a defined objective. Agencies lose few lawsuits over the technical aspects of natural resource management. Lawsuits that produce losses for land management agencies most frequently focus on the details of adherence to procedure—with rules that seem to change with the results of each lawsuit. The result has been the evolution of the "appeal proof" or "suit proof" process with documentation covering every possible aspect of consideration in great detail. Suit proofing was not the aim of the National Forest Management Act nor the Endangered Species Act. The aim was to produce better land and resource management. The original intent has, in my opinion, been perverted. Risk aversion can be an expensive management style.

So, while stability and predictability in timber supply cannot be assured, improvements can and should be made. As a natural resource management agency, the Forest Service stands on a slippery slope where it dare not stay. The evolving situation is politically, economically, and

ecologically untenable. We must seek and find firmer ground.

The assorted frustrations associated with public land management have come to a point that serious consideration is being given by Congress to transfer ownership of these lands, or the development of their management to the states or other entities.[23] This is a debate that could bear dramatically on stability and predictability.

In a hearing last year before a House budget committee, the Chairman asked for my opinion as to the appropriateness of "devolving" the ownership or management of the National Forests. I asked for his permission to answer that question from two perspectives, as Chief of the Forest Service and as an individual citizen of the Republic. That permission was granted. Answering as Chief, I spoke of the same ideas and concepts that were put forward by Gifford Pinchot[24] and twelve later Chiefs that followed him and preceded me. Their rationale are a clear part of the conservation history of our country[25] and need not be repeated here.

Instead, I will talk about my individual answer. Perhaps each of you can think of what your answer would have been. And, while doing that, consider the stability of other aspects of public land management—water, recreation, fish and wildlife, livestock grazing, mining, etc. What is your personal stake in this debate? I'll tell you mine.

I was born and raised in central Texas—a state with minute amounts of public land.[26] Hunting and fishing and just wandering the woods was my passion, as it is today. But, any such endeavor required asking, begging permission, or sneaking into the woods. I became highly adept at all three.

Once grown, I went off to Texas A&M University with the dream of being a wildlife biologist. Upon graduation, I found work with the Texas Game & Fish Commission and, for ten years, was instrumental in establishing and fostering wildlife management and its commercialization on private land. We were successful beyond our wildest dreams. Nevertheless, I never set foot on private property to hunt or fish without asking permission or paying a fee.

Then, I went to work for the Forest Service and, for the first time in my life, set foot in a National Forest—land that belonged to me and to

---

23. *See, e.g.*, S. 1031, 104th Cong., 1st Sess. (1995) (proposing the transfer of Bureau of Land Management lands to the state in which the lands are located).

24. Chief Forester in the Theodore Roosevelt administration. *See* COGGINS, ET AL., *supra* note 1, at 107-20.

25. *See* COGGINS, ET AL., *supra* note 1, at 107-20, 606-07.

26. The federal government owns 1.3% of the land in Texas. By comparison, New Mexico is 32.4% federal land and 82.9% of Nevada is federal land (federal land is not necessarily public land). BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1995: THE NATIONAL DATA BOOK 227 (1995).

every other citizen of the United States. I thought I had encountered heaven on Earth. The land was my land and no one and no sign said to me "Posted, Keep Out." The days of begging permission and paying to get past those signs were over.

What an incredible inheritance from our forbearers. These lands are an inheritance like no other people in the world possess—how unique it is in the human experience and how incredibly precious. I ponder much on that as I move closer to the end of my life. I think much about what we will leave behind for the people of the United States.

Yet, there are those who say the nation cannot afford to maintain that inheritance. My response is, how can we not afford to sustain that heritage? These lands are a unique part of America's culture—the only such lands that the vast majority of us will ever own. Twenty percent of the American people control 84 percent of the national wealth.[27] Is that not enough? Can we have nothing of our great inheritance for the American people at large? Can anyone seriously believe that devolution of ownership and management of the nation's land will not bring closer the day of those "Keep Out" signs springing up around the borders of what was once our land?

When the approximately 200 million acres[28] were placed in the National Forest system they were lands of little apparent value. Some of those lands, particularly east of the Mississippi, had been seriously mistreated. Then, over the next 100 years, these very same lands have become incredibly valuable, too valuable some believe, for the American people at large to own. If these lands have increased so much in value in 100 years, it is not too difficult to imagine how valuable those lands will be in another 100 years. By then, it is likely that our nation's population, given current trends, will have doubled and, perhaps, redoubled. If those lands are worth gold today they will be worth diamonds in another 100 years. That is not the question. The question is who will own and control these lands?

To say we, as a people, cannot afford those lands is to say that we would "devolve" our heritage and our inheritance for a mess of potage. Speaking strictly for myself, I say that these are my lands and my lands are not for sale, not for giveaway, not for devolvement. I asked my sons and they say the same. My grandchildren are too young to talk much, but they will learn to know and appreciate their heritage if these lands are still theirs as citizens of the Republic. Of course, my grandchildren and their children to be born in 25 or so years have no voice today. So I speak for them now, for I believe that they deserve a chance to make some choices.

---

27. *See generally* FRANK LEVY & RICHARD C. MICHEL, THE ECONOMIC FUTURE OF AMERICAN FAMILIES: INCOME AND WEALTH TRENDS (1991).

28. COGGINS, ET AL., *supra* note 1, at 137.

The same choices that today's citizens were given by our ancestors.

I ended by saying to the Congressman, "Speaking for me, my children, my grandchildren, I object." The Congressman asked, "Why do I think your answer as Chief was "no" and your personal answer is "hell no!?"

So, while citizens consider questions of stability and viable communities, it is well to ponder an even deeper question. What role do the National Forests and other public lands play in the culture of our nation and, perhaps more importantly, in the culture and economy of our regions and states? I cannot conceive of America without National Forests. The most destabilizing act I can visualize for good wildland resource management in America is the devolution of the National Forests and other public lands. But, perhaps, I am too steeped in Forest Service traditions and too emotionally and viscerally attached to these lands that I own in common with all Americans. Perhaps, but, I don't think so. I certainly don't feel so.

Every American should consider the facts and emotions swirling around the issues of devolution and have his or her answer and response ready as the debate begins. The debate has already gone too far when we consider throwing away our public land heritage. The debate, however, reflects a growing frustration with the policy, or lack thereof, reflected in federal public land management. But let the debate center on refining and improving public land management. Stability and predictability are enhanced when we as a nation confront, not run away from, our problems.

It is time to realize that assuring a stable and predictable supply of commodities from public lands is a desire and planning goal that cannot be realized under present circumstances. The situation can be improved. The improvements will only come about with significant changes in public land management policy and practice. Improvement, significant improvement, is necessary.